

**LEGAL SERVICES  
TRUST FUND PROGRAM**

*Eligibility Guidelines*

***LEGAL SERVICES PROGRAMS ONLY***

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The State Bar of California  
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# TRUST FUND PROGRAM ELIGIBILITY GUIDELINES

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# TRUST FUND PROGRAM ELIGIBILITY GUIDELINES

The Trust Fund Program Eligibility Guidelines were designed as a reasonably brief, comprehensive statement of all factors governing eligibility of a legal services project or a support center for an allocation under the Trust Fund Program. The Guidelines, together with the Commentary, are intended to incorporate all provisions found in the statute (Business and Professions Code §6210 et seq.) and in the regulations (Rules Regulating Interest-Bearing Trust Fund Accounts for the Provision of Legal Services to Indigent Persons).

The Commentary follows each Guideline and is designed to further assist you in seeking an allocation under the Trust Fund Program. Bracketed references are to the Business and Professions Code and Regulating Rules.

## REQUIREMENTS FOR ALL APPLICANTS

### 1. To qualify for an allocation under the Trust Fund Program, an applicant must be either:

- a. a qualified legal services project (see Guidelines 2-2.9), or
- b. a qualified support center (see Guidelines 2-2.9).

A single applicant may not qualify as both a legal services project and a support center. [See Rule 4.1.]

#### *Commentary:*

The main distinction between a legal services project and a support center is found in the primary purpose of the organization. Compare Guideline 2.3 (legal services projects) with Guideline 2.3 (support centers). You must elect on your application whether you wish to qualify as one or the other, but you may complete the applications for both a legal services project and a support center. If you qualify in the category of first preference, you will not be considered in the second category. If you do not qualify in the category of your first choice, you will be considered for funds in the category of your second choice if your primary purpose and function qualifies you for that category.

### 1.1. All applicants must include with their applications an assurance that the applicant will use the funds allocated from the Trust Fund Program for the purposes set forth in §§6210-6228 of the Business and Professions Code.

#### *Commentary:*

Your application package will contain an assurance form. Execution of that form will satisfy the requirements of Guidelines 1.1 and 1.2. [See Rule 4.3.]

### 1.2. All applications must include an assurance that the applicant:

#### *Commentary:*

See Commentary 1.1 above. [See B&P Code §§6210, 6217, 6221; Rule 4.3.]

- 1.2.1. at all times will honor the attorney-client privilege and will uphold the integrity of the adversary process; and
- 1.2.2. will not impose restrictions unrelated to statutes and rules of professional conduct on attorneys who provide representation to indigent clients with funds provided in whole or in part from the Trust Fund Program; and

- 1.2.3. does not discriminate on the basis of race, color, national origin, religion, sex, handicap, or age.**

***Commentary:***

The Legal Services Trust Fund Commission recognizes that certain applicants will seek to concentrate legal services on members of specific disadvantaged and underserved groups within their service area, such as elderly, disabled, juveniles, or non-English-speaking persons. The statute is intended to facilitate the provision of free legal services to such disadvantaged and underserved client groups. [See B&P Code §§6210 and 6221.] The Commission therefore will not regard Guideline 1.2.3 as violated merely by the fact that services are concentrated on (or limited to) specific disadvantaged and underserved client groups within the meaning of Business and Professions Code §§6210 and 6221 so long as the basis for such concentration and limitation is reasonably designed to benefit distinct disadvantaged and underserved groups. The certification required by Guideline 1.2.3 does prohibit any discrimination within the targeted client groups, and prohibits any discrimination on matters other than the selection of eligible clients.

- 1.3. Within 30 days after notice of a tentative allocation from the Commission, the applicant must submit a budget and budget narrative for the expenditure of the allocation, including but not limited to:**

- 1.3.1. an explanation of how funds shall be utilized to provide civil legal services to indigent persons; and**

- 1.3.2. for a qualified legal services project, a description of how the project will make significant efforts to use 20% of the funds allocated to increase services to disadvantaged and underserved client groups such as (but not limited to) the elderly, the disabled, juveniles and non-English-speaking persons within the project's service area.**

***Commentary***

You do not need to submit a budget with your initial application. Once the Commission has approved an allocation to your program, the Commission will notify you of the expected amount of the allocation. You shall then prepare a budget and budget narrative in conformance with Guideline 1.3, explaining your intended use of the funds. This budget and budget narrative will be reviewed by the Commission for conformance with the statute prior to disbursement of funds.

The budget or budget narrative should identify how the proposed allocation will aid in providing civil legal services to indigent persons. The narrative should describe the expected increased benefit to indigent persons as a result of the allocation.

The statute requires that qualified legal services projects make significant efforts to use 20% of the allocated funds to increase the availability of service to the elderly, the disabled, juveniles, non-English-speaking persons, or other indigent persons who are members of disadvantaged and underserved groups within your service area. [See B&P Code §6221.] Your narrative should describe specifically how you intend to use 20% or more of the proposed allocation to increase services to such disadvantaged and underserved groups.

One method by which a project may demonstrate its use of 20% of allocated funds to increase services to disadvantaged and underserved client groups is to enter into subcontracts specifically utilizing 20% of the funds for legal services to such client groups.

If you do not demonstrate your “significant efforts” through the use of subcontracts, your budget narrative should describe the clients presently served by your project, define what additional clients from disadvantaged and underserved client groups will be served in the future through the use of 20% of the funds allocated, and state quantifiable objectives for increased services to such groups.

If your legal services project is part of a corporation that has activities outside California, the proposed budget and budget narrative must explain how the proposed allocation will be used within the state of California, as distinguished from an increase in the total multi-state budget. The statute prohibits the use of allocated funds outside the state of California.

If your project provides both legal services and other types of services, your budget and budget narrative must show that the allocation will be used solely for legal services. If your project provides services in both civil and criminal matters, your proposed budget and budget narrative must show that the allocation will be used solely for civil matters. If your project serves some persons who do not fall within the statutory definition of indigent persons (see Commentary 2.3.4), your proposed budget and budget narrative must show that the allocation will be used solely for persons who are indigent within that definition. [See B&P Code §6221; Rule 5.1.]

If you receive an allocation for more than one county, the budget and budget narrative must show that each allocation will be used to provide services to clients in the county for which it is made.

**For support centers, your budget and budget narrative must show that all funds allocated from the Trust Fund Program will be used in support of qualified legal services projects providing free legal services in California.**

- 1.4. **If the Commission or the staff requests any further information relating to an applicant’s eligibility, or related to the amount of the allocation under the Trust Fund Program, the applicant must supply that information. Note, however, that the Commission is not required to notify applicants if their initial application fails to include information sufficient to demonstrate eligibility. Failure to provide information necessary to the Commission’s decisions on eligibility or eligible expenditures (or failure to supply requested information relevant to those decisions) will be grounds for denial of eligibility, or for refusal to recognize part of the applicant’s expenditures within the allocation formula.**

## **REQUIREMENTS FOR LEGAL SERVICES PROJECTS**

2. **To be a qualified legal services project, the applicant must meet each of (a) the requirements of Guidelines 1.1-1.3 above, and (b) each of the following requirements of 2.1-2.4, and (c) the requirements of either 2.5 or 2.6. In order that the Commission may determine the amount of funds to which each qualified legal services project is entitled from the Trust Fund Program, applicants must also submit the information required in 2.7 and 2.8 below. Applicants that meet the requirements of 2.9 below (*pro bono* programs) will be entitled to additional funds from the Trust Fund Program.**

***Commentary:***

A qualified legal services project must meet (1) the requirements applicable to all applicants (see Guidelines 1.1-1.3), (2) the mandatory requirements of 2.1-2.4 applicable to all legal services projects, and (3) either the eligibility presumption described by 2.5 or the requirements for annual cash funds, community support and special services described by 2.6. In addition to this eligibility information, the applicant must submit the information required in 2.7 and 2.8 in order that the Commission may determine the amount of the allocation. If an applicant recruits attorneys in private practice as its principal means of delivering legal services, it may qualify for an additional allocation under 2.9 below.

**2.1. The applicant must be a California nonprofit corporation.**

***Commentary:***

In order to demonstrate your status as a California corporation, please supply a copy of your Articles of Incorporation certified by the California Secretary of State and a current Certificate of Status from the California Secretary of State showing that the corporation is in good legal standing.

In order to demonstrate your nonprofit status, please submit a copy of your determination letter from the Internal Revenue Service granting your application for exemption from the appropriate provisions of subchapter (f) of the Internal Revenue Code of 1954, as amended. Also submit a copy of your determination letter from the State Franchise Tax Board granting your application for exemption from the appropriate section of the California Revenue and Taxation Code. If you have not received such determination letter(s), please attach copy(ies) of your application(s) for exemption, together with an explanation of its/their status.

If you are part of a law school, please submit the information described above with respect to the law school. The school must be a nonprofit law school accredited by the State Bar of California, and your program must be an identifiable unit of the school.

**2.2. The organization must operate exclusively in California. An applicant that is part of a corporation that conducts other activities outside California can meet this requirement if all funds granted will be expended in California.**

***Commentary:***

Your legal services project must be operated exclusively in California. If you are part of a corporation that conducts activities outside California, you must assure the Commission that all money granted from the Trust Fund Program will be expended exclusively in California. If your corporation conducts activities outside California, explain the nature of those activities and how you propose to segregate funds allocated under the Trust Fund Program to assure that they will be expended solely in California. [See B&P Code §6213(a); Rule 2.]

**2.3. The application must demonstrate through objective information that the organization:**

***Commentary:***

Rule 4.3 requires that “objective information” must be provided to assure that you meet the definitional provisions of Guideline 2.3. Such information therefore must describe the organization specifically and factually, using quantitative information where needed, to demonstrate that it meets each of the requirements of Guidelines 2.3.1-2.3.5. [See B&P Code §6213(a); Rules 2, 4.3.]

Quantitative information that may be used as appropriate to demonstrate the portion of the organization’s services that meet the requirements includes the following: numbers of clients

who were served during the previous year; hours of time spent on different kinds of services or on services to different clients in the previous year; accounting records for expenses incurred on different kinds of services or on services to different clients during the previous year.

If you rely on estimates to demonstrate that you have met the requirements, you must make the estimates by a method that is reasonably related to the actual expenditure of funds and explain the basis of the estimates.

### **2.3.1. provides civil legal services**

#### ***Commentary:***

You must provide legal services within the definitions of Rule 2. That rule provides that “legal services include all professional services provided by a member of the State Bar, and similar or complementary services of a law student or a paralegal under the supervision and control of a member of the State Bar in accordance with law.” If your organization provides services in addition to legal services, your application must describe those other activities, identify the percentage of the overall services provided that are not legal services, and state the basis by which you computed that percentage. [See Rule 2.]

### **2.3.2. without charge**

#### ***Commentary:***

Payments by clients for costs and expenses or a processing fee of \$20 or less shall not be considered a “charge” for legal services, so long as the processing fee is administered so that it does not operate as a barrier to indigent persons receiving services. If you impose a processing fee, you must establish procedures for waiving the fee for all clients who cannot afford it. You must inform prospective clients of the availability of a waiver at the same time and in the same manner that they are informed of the fee, and in a language the client can understand. If you charge a processing fee, your application must include information about procedures for waiving the fee for clients who cannot afford it. If you charge some clients amounts in excess of costs and a \$20 processing fee, your application must state the percentage of your work in which such a charge is made, and the basis for computing that percentage. Only up to \$10 per client of the processing fee will be regarded as a “qualified expenditure.” Accordingly, your application must state the amount of all processing fees that exceeded \$10 per client.

If attorneys’ fees are generated through court awards, such fees must be used to provide further civil legal services without charge to indigent persons.

“Costs and expenses” include any out-of-pocket expenses incurred by the organization (or by *pro bono* attorneys recruited by the organization), including recoverable costs of litigation, copying charges, telephone charges, postage charges, and other out-of-pocket expenses normally charged to clients by attorneys in private practice. An applicant may be considered as providing legal services “without charge” within the meaning of Guideline 2.3.2 in spite of charges to clients for such items. [See Rule 3.2.]

### **2.3.3. to persons**

#### ***Commentary:***

You may consider legal services provided to an organization (e.g., an unincorporated association, partnership or corporation) as services to indigent persons if the organization provides benefits primarily to persons who are indigent as described below in the Commentary on Guideline 2.3.4. In determining whether an organization so qualifies, the Commission will

consider at least the following factors: (a) whether the organization is tax exempt under I.R.C. §501(c)(3); (b) the organization's primary purpose as stated in its bylaws or articles; (c) the number and percentage of indigent persons on the board of directors or principal advisory body of the organization; and (d) the percentage of its members who are indigent persons.

If you provide more than 10% of your services to organizations (whether qualifying or non-qualifying), your application must identify the five organizations that received the most legal services during the prior calendar year and, for each such organization, supply the information listed in the preceding sentence. You need not disclose information protected by the attorney-client privilege. (Such identification of organizations is required for applicants who receive 60% or more of their income from the Legal Services Corporation only upon request of the Commission. All other applicants must supply the information in their applications.) If you provide some portion of your legal services to organizations that do not so qualify, explain the percentage of overall services provided to such non-qualifying organizations, and the basis of your computation.

#### **2.3.4. who are indigent**

##### ***Commentary:***

An indigent person is defined by the Business and Professions Code §6213(d) as follows:

“Indigent person” means a person whose income is (1) 125% or less of the current poverty threshold established by the United States Office of Management and Budget, or (2) who is eligible for Supplemental Security Income or free services under the Older Americans Act or Developmentally Disabled Assistance Act. With regard to a project which provides free services of attorneys in private practice without compensation, ‘indigent person’ also means a person whose income is 75% or less of the maximum levels of income for lower income households as defined in §50079.5 of the Health and Safety Code. For the purpose of this subdivision, the income of a person who is disabled shall be determined after deducting the costs of medical and other disability-related special expenses.”

Your application must state what percentage of your organization's services were provided during the previous calendar year to individual clients who did not fall within this definition. You must adopt written financial eligibility guidelines and submit them with your application. If your eligibility criteria include persons who are not indigent within the definition of §6213(d) above, explain the basis for your computation of the percentage of clients served that falls outside the definition. If you did not have written financial eligibility guidelines in the prior year, your application must explain the basis of your computation of percentage and supply objective support for the computation. [See B&P Code §§6213(d) and 6218.]

If you provide legal services for the benefit of a group or class of persons beyond the specific individuals or organizations whom are your clients, you may consider the services as “legal services provided to indigent persons” only if the legal matter is primarily for the benefit of indigent persons.

In determining whether a legal matter is primarily for the benefit of indigent persons, the Commission may consider the following factors and any others that aid in making that determination: (1) the forum in which the matter is being pursued, e.g., courts, administrative agency, legislature, etc.; (2) whether the named clients are indigent persons or qualifying organizations (under Commentary 2.3.3 above); (3) in the case of a class action, the definition of the class contained in the complaint and proposed or actual class certification orders; (4) a description of the group of individuals that would benefit from a favorable resolution of the



legal matter; (5) whether a majority of those who would benefit are indigent persons; (6) the relation of the legal issues raised by the matter to the needs of indigent persons; and (7) whether indigent persons are disproportionately impacted by the legal issues raised by the matter.

If legal services for the benefit of a group or class of persons beyond the specific individuals or organizations who are your clients constitute more than 10% of your legal services, your application must identify the ten such legal matters on which you expended the largest amount of funds in the prior calendar year. For each of the matters so identified in your application, please describe who would benefit from the services, state whether the matter is primarily for the benefit of indigent persons and, if so, explain the reasons you reached that conclusion. For any such matter that is primarily for the benefit of indigent persons, your description should include the information listed as items (1) through (7) in the preceding paragraph; you must quantify the percentage of your clients who are indigent persons (or organizations qualifying under Commentary 2.3.3 above) and the percentage of the persons who would benefit from the services who are indigent persons. Explain the basis of this information. You need not disclose information protected by the attorney-client privilege. (Such identification of these matters is required for organizations that receive 60% or more of their income from the Legal Services Corporation only upon request of the Commission. All other applicants must supply the information in their applications.)

If some portion of your legal services are in matters for the benefit of a group or class of persons beyond your specific clients but are not primarily for the benefit of indigent persons, identify the percentage of overall services provided in such matters and explain the basis of your computation.

### **2.3.5. as the primary purpose and function of the corporation.**

#### ***Commentary:***

Your application must state the net percentage of the corporation's overall budget that was expended in the previous calendar year to provide civil legal services without charge to persons who are indigent. Note that you are required to demonstrate the *corporation's* primary purpose, and not simply the primary purpose of a *part* of the corporation. (If your project is operated by a law school, see the last section of this Commentary on Guideline 2.3.5.)

If more than 75% of the corporation's expenditure budget for the fiscal year for which it is seeking an allocation is designated for the provision of civil legal services without charge to persons who are indigent, and if 75% of its expenditures for the most recent reporting year were incurred for such legal services, the corporation will be presumed to meet the "primary purpose and function" test. In demonstrating your compliance with this 75% test, you may not include the value of donated services.

An applicant not qualifying for the 75% presumption may nevertheless apply for an allocation, demonstrating its purpose and function by other means. An applicant not qualifying for the presumption shall state separately each purpose and function of the corporation, and state what percentage of the expenditures in the most recent calendar year, and what percentage of the budget in the upcoming year, are allocated to each of these separate purposes and functions. The application shall further state the basis for these allocations.

In addition to this submission of expenditure and of budget information, primary purpose and function can be additionally supported by historic expenditure information, by the organization's stated purpose in articles, bylaws or policy statements or case priority guidelines,

or by the demonstrated track record of the applicant in providing legal services without charge to indigent persons.

An applicant that operated in previous years as a project within an organization providing substantial services other than legal services to indigent persons, or as an entity other than a corporation, but which has since become a separate California nonprofit corporation whose primary purpose and function is the provision of legal services without charge to indigent persons, may establish its status as a qualified legal services project and its proportionate entitlement to funds based upon financial statements which strictly segregate that portion of the organization's expenditures in prior years which were devoted to civil legal services for indigents. Thus, if you are recently incorporated and previously operated as a part of an umbrella organization, you may utilize the expenditures of your predecessor organization so long as financial statements strictly segregate the expenditures for such legal services. [See Rule 2.]

If your legal services program is operated by an accredited nonprofit law school, you are required only to demonstrate the program's primary purpose, and not the corporation's primary purpose. Your program must be operated exclusively in California and the law school must be accredited by the State Bar of California. The program must have operated for at least two years at a cost of at least \$20,000 per year, as an identifiable law school unit with the primary purpose and function of providing civil legal services without charge to indigent persons. The program may meet the "primary purpose" test according to the 75% test described above or by demonstrating its purpose and function by the other means described above. [See B&P Code §6213(a)(2).]

**2.4. The application must include a description of the organization's quality control procedures and standards, including but not limited to the matters described in Guidelines 2.4.1 - 2.4.4 or the material described in 2.4.5:**

***Commentary:***

If you are already subject to quality control reviews by the Legal Services Corporation or the California Department of Aging, please indicate the quality control review procedures to which you are subject, and attach the most recent comprehensive written quality control review by the monitoring agency. (It is not necessary to explain in detail the review procedures generally followed by the Legal Services Corporation or the California Department of Aging.) If you are not subject to such review procedures, please describe each of the matters listed in Guidelines 2.4.1-2.4.5. The Commission is particularly interested in your response to 2.4.4 concerning supervisory structure, procedures and responsibilities. [See B&P Code §§6213(a) and 6217(a); Rules 4.4 and 5.3.]

- 2.4.1. the minimum experience and education requirements for attorney and paralegal employees;**
- 2.4.2. the current salaries and job descriptions for all filled and unfilled management and professional positions, including paralegal personnel;**
- 2.4.3. the minimum experience and educational requirements for attorney supervisors;**
- 2.4.4. the supervisory structure, procedures and responsibilities.**

- 2.4.5. An applicant who has received a written quality control review by the Legal Services Corporation or the California Department of Aging may satisfy the requirement of Guideline 2.4 by attaching that review in lieu of the matters required by 2.4.1-2.4.4.
- 2.5. Applicants must meet the requirements of this Guideline 2.5 or the requirements of 2.6. To meet the requirements of this Guideline 2.5, the applicant must receive at least some funding either:
- 2.5.1. from a grant made to the organization by the Legal Services Corporation or by an Area Agency on Aging distributing Older Americans Act funds; or
- 2.5.2. from an approved contract with another organization that is a grant recipient meeting the terms of Guideline 2.5.1.

***Commentary:***

In order to qualify under Guideline 2.5 (and therefore waive the requirements of 2.6), you must receive at least some funding either directly from the Legal Services Corporation (or from an Area Agency on Aging) or by contract with an LSC-funded organization (or by a contract with an Area Agency on Aging-funded organization). If your funding is by contract, the contract must have been approved by LSC (or by the state or local agency administering the Older Americans Act funds).

“Legal Services Corporation” is defined in the Business and Professions Code §6213(f) as the Legal Services Corporation established under the Legal Services Corporation Act of 1974 (Public Law 93-355; 42 U.S.C. 2996 and following). “Older Americans Act” is defined in the Business and Professions Code §6213(g) as the Older Americans Act of 1965, as amended (Public Law 89-73; 42 U.S.C. 3001 and following). [See B&P Code §§6213(f), 6213(g), 6214(a); Rule 2.]

- 2.6. An applicant that does not meet the requirements of Guideline 2.5 must meet each of the requirements of Guidelines 2.6.1 - 2.6.3 below:
- 2.6.1. The applicant must receive at least \$20,000 annual cash funds from sources other than the Trust Fund Program to support the program described in Guideline 2.3 above, and

***Commentary:***

In order to qualify under Guideline 2.6.1, you must demonstrate at least \$20,000 annual cash funds from sources other than the Trust Fund Program to support the provision of civil legal services without charge to indigent persons. If you did not receive at least \$20,000 cash funds from such sources in the year immediately preceding the application, please demonstrate that your average annual cash funds over some period of years has been at least \$20,000 per year. This computation can include only cash funds, and may not include the value of any donated services or equipment.

You may not include money received from fee-generating cases or from court-awarded attorneys’ fees. [See B&P Code §6214(b)(1).]

If you are applying as a law school program, you must demonstrate the program has operated for at least two years at a cost of at least \$20,000 per year.

- 2.6.2. The applicant must have demonstrated community support for the operation of a viable ongoing program, and

***Commentary:***

If you have received at least \$20,000 per year annual cash funds from local sources in the community in which you provide your services, such support is sufficient to meet the requirements of Guideline 2.6.2. You may not count contributions from employees of your organization toward the local support requirement of this Guideline 2.6.2, though it can be counted for 2.6.1.

If you cannot show \$20,000 annual local community financial support, you may demonstrate community support through the donation of services or other non-cash contributions, by service of local community leaders on your board of directors, fundraising committees, etc., or otherwise demonstrate that the community actually supports the operation of a viable ongoing program.

Letters of support from local community leaders are not sufficient to demonstrate the community support required by Guideline 2.6.2. [See B&P Code §6214(b)(2).]

**2.6.3. The applicant must provide at least one of the following special services:**

**2.6.3.1. Recruiting substantial numbers of attorneys in private practice who serve without compensation providing the legal services referred to in Guideline 2.3 above, or**

***Commentary:***

In deciding whether you are eligible to apply as a project that recruits “substantial numbers of attorneys,” the Legal Services Trust Fund Commission will consider several factors. At a minimum you must meet at least one of the following tests:

- (a) you recruited at least 30 attorneys who provided services in the previous calendar year; or
- (b) you recruited at least 5% of the licensed attorneys in the county you serve who provided services in the previous calendar year; or
- (c) the attorneys you recruited donated at least 1000 hours of legal services for your clients in the previous calendar year.

Provided you meet one of those minimum tests, you may demonstrate your project’s recruitment of “substantial numbers of attorneys” in one or more of the following ways:

- (a) the number of attorneys recruited;
- (b) the percentage of attorneys in your local service area that donated services through your project;
- (c) the verified value of donated civil legal services in comparison to your expenditures and budget;
- (d) the number of hours donated by each attorney;
- (e) the number of attorneys in your area who have special expertise needed to provide the services your project offers;
- (f) other considerations that may affect the availability of volunteer attorneys in your service area.

An attorney who is not an employee of the applicant can be considered “in private practice,” and attorneys may be considered “in private practice” even though they work for government agencies, corporations, or in non-legal occupations.

Attorneys can be considered to serve “without compensation” even though they are reimbursed for out-of-pocket expenses by the client or by the applicant or by other sources. (See Guideline and Commentary 2.3.2.) [See B&P Code §6214(b)(3)(A).]

**2.6.3.2. Providing legal representation, training or technical assistance on matters concerning special client groups or on matters of specialized substantive law important to special client groups.**

***Commentary:***

“Special client groups” include any underserved or disadvantaged groups, including, without limitation, the elderly, disabled, juveniles, or non-English-speaking persons. [See B&P Code §6214 (b)(3)(B).]

**2.7. The application must include a financial statement that segregates the total expenditures of the project. The financial statement must meet the requirements of Guidelines 2.7.1 and 2.7.2 below.**

- 2.7.1. The statement must show expenditures for the calendar or fiscal year ended most recently before the application deadline, and must be audited or reviewed by an independent certified public accountant if the gross expenditures are less than \$500,000. If the gross expenditures exceed \$500,000, the financial statement must be audited. If, however, such a statement is unavailable at the time of application, the applicant may substitute an approximated financial statement covering said year and submit an audited statement when available (but in no event more than 60 days after the application deadline). The required financial statement must be received prior to the receipt of any funds from the Trust Fund Program.**

***Commentary:***

Independent CPA-audited or reviewed statements are required of organizations with gross expenditures of less than \$500,000. Organizations with gross expenditures in excess of \$500,000 must submit audited statements. If such a statement is unavailable at the time of the application, you may substitute an approximated financial statement, but you must submit an audited or reviewed statement no more than 60 days after the application deadline. [See B&P Code §6222; Rule 4.2.]

- 2.7.2. If the financial statement submitted under Guideline 2.7.1 covers a period other than the calendar year, the application must also include an income and expense statement covering the period from the end of the last financial statement to December 31. This statement need not be audited or reviewed. However, the Commission reserves the right to require an audit or review.**
- 2.7.3. The financial statement need not distinguish between legal services without charge to persons who are indigent (within the definition of Guideline 2.3.4 above) and other services performed by the project. However, if an applicant does provide other services, the application must include the approximated information requested on the additional expenditure form(s) regarding legal services/other activities, civil/criminal, free/charged, indigent/non-indigent, in-state/out-of-state expenditures.**

***Commentary:***

The amount of your grant will be based in part on the amount of your expenditures in the previous year for civil legal services without charge to indigent persons. See Guidelines 2.3.1 through 2.3.4 for the definitions the Commission will use to determine the portion of your

expenditures that are qualified to be counted in determining your grant allocation. [See B&P Code §6216(b).]

Records that may be used as appropriate to demonstrate the portion of the organization's expenses that qualify to be counted in determining the grant allocation include the following: records of the numbers of clients served during the previous year; records reflecting the hours of time spent on different kinds of services or on services to different clients in the previous year; accounting records reflecting expenses incurred on different kinds of services or on services to different clients during the previous year.

If you rely on estimates to establish the amount of your qualified expenditures, you must make the estimates by a method that is reasonably related to the actual expenditure of funds and explain the basis of the estimates.

**2.7.4. The financial statement must disclose and segregate any amounts paid to or received from another program applying for an allocation under the Legal Services Trust Fund Program.**

***Commentary:***

In order to avoid "double counting" of funds, funds contributed by one program to another program, when both are applicants for an allocation from the Legal Services Trust Fund Program, will be disclosed in the financial statements of both programs. In determining allocations, such funds will be counted only for the program receiving the funds, unless the receiving and contributing programs made a contrary agreement differently allocating the credit for the contributed funds between the two programs. If such an agreement is made, both programs must disclose such agreement to the Commission.

**2.8. The application must state the counties in which the legal services described in Guideline 2.3 above are provided. An applicant that provides such services in more than one county must state the total expenditures made for services in each county and explain the basis of the county-by-county allocation. In allocating total expenditures among counties on Trust Fund Program applications, an applicant must use a method that is reasonably related to the actual expenditure of funds and explain the basis of the allocation.**

***Commentary:***

You may qualify for allocations only in counties you are presently serving. If you are presently serving more than one county, allocate the expenditures that meet the requirements of Guideline 2.3 by county, explaining the basis for your allocation. The Commission will evaluate whether your allocation is reasonably related to the actual expenditure of funds in light of the particular characteristics of your organization and your services. The allocation information does not need to be audited. [See B&P Code §6216(b).]

The following are some of the bases for allocation of expenses among counties served that the Commission has found in past years to be reasonable under appropriate circumstances: numbers of clients served who reside in each county or of cases handled in each county; actual or estimated hours of service provided in each county, or provided to clients who reside in each county; actual expenses of providing service to clients in each county, including both personnel and non-personnel expenses; statistics that establish the geographic distribution by county of persons who will benefit from the services provided. In certain circumstances it may be necessary to use a combination of these or other methods to arrive at an allocation method that is reasonably related to the actual expenditure of funds. If you rely on estimates, you must

make the estimates by a method that is reasonably related to the expenditure of funds and explain the basis of the estimates.

If you allocate expenses to counties other than those in which your individual or organizational clients reside or those in which you provided the services, the allocation must be reasonably related to the geographic distribution of the indigent persons who will benefit from the services. In evaluating the reasonableness of such allocations, the Commission may consider the following factors and any others that aid in making that determination: (1) the forum in which the matter is being pursued, e.g., courts, administrative agency, legislature, etc.; (2) whether the matter can be expected to establish a precedent and the scope or breadth of that precedent; (3) in the case of a class action, the definition of the class contained in the complaint and proposed or actual class certification orders; (4) a description of the group of individuals that would benefit from a favorable resolution of the legal matter; and (5) the legal issues raised by the matter.

For a legal matter or matters for which you allocate expenses based on residence of persons other than your individual clients, your application must identify the legal matters and, for each matter, provide the information listed in items (1) through (5) in the preceding paragraph. You should also identify the geographic and numeric distribution of the persons the matter may benefit and your approximate expenditures for the matter. Explain the basis of this information. You need not disclose information protected by the attorney-client privilege.

Once all applications are received and a list is compiled of counties with no legal services providers, you may propose to provide such legal services in a county not previously served by a qualified legal services project. [See B&P Code §6216(b)(2).]

**2.9. An applicant wishing to qualify for additional funds may demonstrate that it meets each of the following requirements:**

- 2.9.1. the requirements of Guideline 2.6.1 above; and**
- 2.9.2. the requirements of Guideline 2.6.2 above; and**
- 2.9.3. the requirements of Guideline 2.6.3.1 above; and**

***Commentary:***

See Commentary concerning Guidelines 2.6.1, 2.6.2 and 2.6.3.1. In order to receive a share of the additional funds for a county, you must recruit “substantial numbers of attorneys” in that county. You must also receive cash funds from other sources in the amount of at least \$20,000 per year to support free legal representation to indigent persons in that county, and you must have local community support for the operation of a viable ongoing program.

**2.9.4. the applicant’s principal means of delivering legal services is the recruitment of attorneys in private practice.**

***Commentary:***

See Commentary concerning Guidelines 2.6.1-2.6.3.1. One method by which you may demonstrate that such recruitment is your project’s principal means of legal services delivery is to show by objective evidence that the attorneys recruited actually provided substantial free civil legal services and that the number of hours of services so provided in the previous calendar year by attorneys recruited exceeded the number of hours of services provided by lawyer staff employed by the applicant.

An alternative method by which you may demonstrate that such recruitment is your project’s principal means of legal services delivery is to show by objective evidence (1) that the attorneys

recruited actually provided substantial free civil legal services; (2) that the combined number of hours of service by volunteers, both attorneys and paralegals, exceeds the combined number of hours of service by staff attorneys and paralegals; and (3) that the number of hours of service by volunteer attorneys is more than half as many as the combined number of hours of service by staff attorneys and paralegals.

If you do not use either of these methods to demonstrate your principal delivery means, your application should describe and explain the method used. [See B&P Code §§6216(b)(1)(B); Rule 2.1.]